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5 Attorneys for Plaintiff Gregory A. Strasburg,
Individually and as Trustee of the Gregory A. Strasburg Revocable Trust dated 4/8/2003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

0 GREGORY A. STRASBURG, Individually
1 and as Trustee of the GREGORY A.
2 STRASBURG REVOCABLE TRUST dated
3 4/8/2003
4 Plaintiff,
5 v.
6 *M/Y JUST A NOTION*, Official Number
7 1089525, her engines, tackle, furniture and
appurtenances, *in rem*; PETER BLAIR, *in
personam*; JIM SINGLETON, *in personam*;
and THE YACHT CLUB, LLC., a Nevada
Corporation
8 Defendants.
9) CASE NO.: 08CV0021 JLS (BLM)
0)
1) IN ADMIRALTY
2)
3) PLAINTIFF'S OPPOSITION TO
4) DEFENDANTS' MOTION TO
5) DISMISS THE SECOND, THIRD,
6) FOURTH AND FIFTH CAUSES OF
7) ACTION FOR FAILURE TO STATE A
8) CLAIM UPON WHICH RELIEF CAN
9) BE GRANTED (FRCP 12(b)(6), OR, IN
0) THE ALTERNATIVE, MOTION FOR
1) A MORE DEFINITE STATEMENT
2)
3) Date: March 28, 2008
4) Time: 10:30 a.m.
5) Judge: Hon. Janis L. Sammartino
6) Dept.: Courtroom 6

21 COMES NOW Plaintiff GREGORY A. STRASBURG, individually and as Trustee of the
22 GREGORY A. STRASBURG REVOCABLE TRUST dated 4/8/03 (hereinafter referred to as
23 "Plaintiff") by and through his attorney of record, James W. Alcantara, Esq. of Alcantara &
24 Associates, APC., and hereby submits his Opposition to Defendants' Motion to Dismiss.

MEMORANDUM OF POINTS AND AUTHORITIES

A dismissal based upon rule 12(b)(6) can be based upon either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable theory. (See Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988)). Under rule 12(b)(6), a complaint should

1 not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff could
 2 prove no set of facts in support of his or her claim for relief. (See Levine v. Diamanthuset, Inc.,
 3 950 F.2d 1478, 1482 (9th Cir. 1991)). The general rule in applying this standard is that the court
 4 must treat all of plaintiff's factual allegations as true. (See Experimental Eng'g, Inc. v. United
 5 Technologies Corp., 614 F.2d 1244, 1245 (9th Cir. 1980)). In addition, when a motion is brought
 6 before the court under Fed. R. Civ. P. 12(b)(6), the court assumes that all general allegations
 7 "embrace whatever specific facts might be necessary to support them." (Peloza v. Capistrano
 8 Unified School District, 37 F.3d 517, 521 (9th Cir. 1994)).

9 In the present case, Plaintiff alleges Defendant Blair (on behalf of himself and all other
 10 defendants) made specific representations to Plaintiff Greg Strasburg with the purpose of inducing
 11 Plaintiff to transfer ownership of Plaintiff's Vessel to Defendant Yacht Club, LLC.¹ Plaintiff
 12 entered into a written contractual "Operating Agreement" with Defendants as a direct result of the
 13 false representations. The Complaint clearly details the fraudulent conduct of Defendants.
 14 Specifically, the Complaint alleges Defendant Blair made numerous false statements (set forth with
 15 particularity) to Plaintiff Strasburg in order to have him enter into the Operating Agreement.

16 The authority cited by Defendants supports denial of their motion. *Committee on*
17 Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 218, provides that a
 18 plaintiff need only "set out a representative selection of the alleged misrepresentations sufficient to
 19 permit the trial court ascertain whether the statements were material and otherwise actionable."
 20 Defendants' own motion cites to Plaintiff's Complaint wherein a representative selection of
 21 specific false statements are made. *See, Motion to Dismiss* p.3, ll. 12-24.

22 The purpose of this lawsuit is to put and end to a scam perpetrated by Defendants against
 23 Plaintiff. The Complaint sets forth sufficient particularities to allow this Court to ascertain
 24 whether the conduct of Defendants was material and otherwise actionable. Thus, Defendants'
 25 motion should be denied.

26 Plaintiff will demonstrate Defendants violated their obligations under the contractual
 27

28 ¹ Each of the specific statements set forth in the Complaint were made by Defendant Blair. At this point it is believed those statements were made on behalf of all Defendants.

1 Operating Agreement. Further, Plaintiff also will demonstrate fraud in that Defendants had no
2 intention of complying with their obligations under the contractual Operating Agreement. The
3 conduct of Defendants, after entering into the contractual Operating Agreement, clearly proves
4 these allegations. Discovery is necessary to ultimately reveal all of the fraudulent conduct and
5 those specific persons and/or entities involved in such conduct. At this stage of the pleadings,
6 however, Plaintiff has alleged more than sufficient details to allow Defendants to prepare their
7 defenses as this case goes forward.

8 Plaintiff contends the Complaint is sufficient in that all of the causes of action therein are as
9 detailed and complete as possible at this stage of the case; however, in the alternative, should this
10 Court believe that the allegations of any particular cause of action in the Complaint are
11 insufficient, Plaintiff respectfully requests leave to amend the Complaint accordingly.

12
13 RESPECTFULLY SUBMITTED this 14th day of March 2008.
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15 ALCANTARA & ASSOCIATES, APC
16

17 s/ James W. Alcantara
18 JAMES W. ALCANTARA, ESQ.
19 Attorney for Plaintiff Gregory A. Strasburg,
Trustee of the Gregory A. Strasburg Revocable
Trust dated 4/8/2003
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